

1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

2

3 STEPHEN ARELLANO,

4 Plaintiff,

5 v.

6 CONCORD CA POLICE DEPARTMENT,

7 Defendant.

8

Case No. 25-cv-03690-WHO**ORDER DENYING MOTION TO
DISQUALIFY AND GRANTING
MOTION TO DISMISS**

Re: Dkt. Nos. 7, 10

9 Plaintiff Stephen Arellano filed this case in April 2025, asserting a claim for defamation
10 against a police officer working for the City of Concord. Compl., Dkt No. 1. I related this case to
11 a prior case Arellano filed in 2024, *Arellano v. Becton*, Case No. 24-cv-02250-WHO (“Related
12 Case”). In the Related Case, Arellano sued the District Attorney, prosecutors, judges, and a police
13 officer involved in the investigation and prosecution of an individual who murdered his son. I
14 dismissed that case with prejudice and the dismissal was affirmed on appeal by the Ninth Circuit.
15 Related Case, Dkt. Nos. 39, 42.

16 Defendant City of Concord moved to dismiss this new case. Dkt. No. 15. Arellano did not
17 oppose or otherwise respond to the motion to dismiss by the required deadline. Dkt. No. 8. Once
18 this case was reassigned to me, I issued an Order to Show Cause to give Arellano an opportunity
19 to respond to the motion to dismiss by July 11, 2025. Dkt. No. 9. Arellano filed a response to the
20 Order to Show Cause on July 11, 2025. However, on June 27, 2025, Arellano also filed a motion
21 to disqualify me from hearing this case. Dkt. No. 10.

22 For the following reasons, the motion to disqualify is DENIED and the motion to dismiss
23 is GRANTED.¹

24

DISCUSSION

25

I. PLAINTIFF’S MOTION TO DISQUALIFY

26

Arellano moves under 28 U.S.C. §§ 455 and 144 to disqualify me from hearing this related

27

28 ¹ These matters are appropriate for resolution on the papers. The August 6, 2025, hearing on the
motions is VACATED. Civ. L.R. 7-1(b).

case. Dkt. No. 10 (“Motion to Disqualify”). 28 U.S.C. section 455 provides that a judge should disqualify themselves in certain circumstances, including where “his impartiality might reasonably be questioned” or “he has a personal bias or prejudice concerning a party.” 28 U.S.C. § 455(a), (b)(1). Under 28 U.S.C. section 144, when a party believes a judge has a personal bias or prejudice either against him or in favor of an adverse party, the party may seek disqualification by filing an affidavit stating, “the facts and the reasons for the belief that bias or prejudice exists.” The judge in question must determine whether the affidavit “specifically alleges facts stating grounds for recusal”; if so, the motion “must be referred to another judge for a determination of its merits.” *United States v. Sibla*, 624 F.2d 864, 867 (9th Cir. 1980).²

The standard under both sections is “whether a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be questioned.” *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986). “The alleged prejudice must result from an extrajudicial source; a judge’s prior adverse ruling is not sufficient cause for recusal.” *Id.*

Arellano alleges I am “biased and prejudiced” against him because I have “ignored the law” and violated my oath of office and plaintiff’s “civil rights,” and I cannot be impartial towards him. *See generally* Motion to Disqualify. Arellano’s main evidence of my alleged bias are my rulings in the Related Case because I dismissed his civil and victim’s rights claims asserted against state court judges, the district attorney and members of her staff, and a police officer, and that I did so without holding oral argument. Arellano likewise complains of how the Ninth Circuit handled his appeal, and about other rulings of mine and other judges that are unrelated to his cases. *See Related Case*, Dkt. Nos. 37, 39; *see also* Motion to Disqualify at 2, 4.³ However, “a judge’s prior adverse ruling is not sufficient cause for recusal.” *United States v. Studley*, 783 F.2d at 939; *see also* *Liteky v. United States*, 510 U.S. 540, 555 (1994) (“judicial rulings alone almost never

² I do not refer this motion to another judge under 28 U.S.C. § 144, both because Arellano has not submitted “a timely and legally sufficient affidavit” and because Arellano’s motion does not allege facts stating grounds for recusal. *Sibla*, 624 F.2d at 867 (discussing affidavit requirements).

³ Arellano appealed the dismissal, and the dismissal was affirmed by the Ninth Circuit. *See Related Case* Dkt. No. 42. In his Motion to Disqualify, Arellano makes many complaints about the handling and resolution of that appeal. *See* Motion to Disqualify at 7.

1 constitute a valid basis for a bias or partiality motion”).

2 The only other bases Arellano raises to argue for disqualification are conclusory
3 allegations about my past political affiliations. *See Motion to Disqualify* at 3, 5, 6. Those
4 conclusory allegations are likewise insufficient to support disqualification. *See In re Mason*, 916
5 F.2d 384, 386 (7th Cir. 1990) (“Courts that have considered whether pre-judicial political activity
6 is ... prejudicial regularly conclude that it is not.”); *see also Hayes v. Oregon*, 2021 WL 374967, at
7 *3 (D. Or. Feb. 3, 2021).

8 Arellano’s motion to disqualify is DENIED.

9 **II. DEFENDANT’S MOTION TO DISMISS OR STRIKE**

10 In the Complaint, Arellano asserts many of the same factual allegations made in the
11 Related Case concerning the tragic murder of his son and his belief that the District Attorney and
12 staff, various judges, and police officers should be held liable for failing to put or keep the killer in
13 prison before his son’s murder and for conduct with respect to the killer’s arrest, the investigation
14 of the murder, and the prosecution of the killer. *See generally* Compl., Dkt. No. 1. He also
15 alleges new conduct: that he was defamed by an unnamed Concord police officer on November 9,
16 2024, when Arellano went to the Concord Police Department to deliver some papers in a package.
17 Compl. pg. 2. Arellano alleges that the officer turned on his bodycam and refused to accept the
18 package, exclaiming “I’m not taking that, it might contain a BOMB or poison.” Compl. at 2.
19 After Arellano slipped the package through the metal gate, the officer stated he would “throw it in
20 the Garbage” and the officer refused to give Arellano his name as he walked away. *Id.* at 2-3.
21 Arellano was able to retrieve his package through the metal gate. *Id.* at 3.

22 Defendant Concord moves to strike a paragraph from page 3 of the Complaint regarding
23 District Attorney Diana Becton that reiterates some of the dismissed allegations from Arellano’s
24 Related Case. Mot. at 10-11. Concord argues that the allegations should be struck as “immaterial,
25 impertinent, or scandalous matter.”⁴

26
27 ⁴ Federal Rule of Civil Procedure 12(f) provides that a court “may strike from a pleading an
insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R.
Civ. P. 12(f). The function of a motion to strike under Rule 12(f) is to avoid the expenditure of
time and money that must arise from litigating spurious issues by dispensing of those issues before

1 The motion to strike is DENIED. While I doubt the allegations are relevant to this case,
2 there is little to be gained by striking them. As discussed below, the Complaint will be dismissed
3 for failure to state a defamation claim based on the actions of the officer on November 9, 2024.

4 Turning to the motion to dismiss, despite Arellano's listing of a number of federal and
5 state criminal statutes in the caption of the Complaint, the only cause of action which is discussed
6 and alleged in the body of the Complaint is the claim for "defamation" based on comments a
7 police officer made to Arellano while his body camera was on, on November 9, 2024.⁵

8 Concord argues that it cannot be liable for defamation because Arellano has not identified
9 a "statutory basis" for bringing a defamation claim against a public entity as required by California
10 Government Code section 815(a). Motion to Dismiss at 7-8. Despite section 815(a), however,
11 courts have allowed defamation claims to proceed against public entities where the employee or
12 employees who allegedly defamed a plaintiff were acting within the scope of their employment.
13 *See Hashim v. Kern Cnty. Hosp. Auth.*, No. 1:21-CV-0773 JLT BAK (EPG), 2022 WL 563186, at
14 *3 (E.D. Cal. Feb. 24, 2022) ("For example, a public entity may be held liable for defamation and
15 slander by its employees when the employees acted within the scope of employment. *See Nadel v.*
16 *Regents of Univ. of Cal.*, 28 Cal. App. 4th 1251, 1259 (1994) (applying Section 815.2(a) to
17 defamation claims against the public entity); *City of Costa Mesa v. D'Alessio Investments, LLC*,
18 214 Cal. App. 4th 358, 377 (2013) ("case law supports the general proposition that a public entity
19 and its employees may (in appropriate circumstances) be held liable for slander")).

20 The more fundamental problem with Arellano's defamation claim is that the alleged
21 defamatory statement, "I'm not taking that, it might contain a BOMB or poison" was not a
22 statement of fact, but clearly rhetorical hyperbole or not-actionable opinion. "Statements do not
23 imply a provably false factual assertion and thus cannot form the basis of a defamation action if

24
25

26 trial. *See Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev'd on other grounds*,
27 510 U.S. 517 (1994) (citation omitted). Motions to strike "are generally disfavored because they
are often used as delaying tactics and because of the limited importance of pleadings in federal
practice." *Rosales v. Citibank*, 133 F. Supp. 2d 1177, 1180 (N.D. Cal. 2001).

28 ⁵ "Defamation requires a publication that is false, defamatory, unprivileged, and has a tendency to
injure or cause special damage." *Hawran v. Hixson*, 209 Cal. App. 4th 256, 277 (2012).

1 they cannot “ ‘reasonably [be] interpreted as stating actual facts’ about an individual.” [*Milkovich*
2 *v. Lorain Journal Co.* (1990) 497 U.S. 1, 20 (1990)]. Thus, ‘rhetorical hyperbole,’ ‘vigorous
3 epithet [s],’ ‘lusty and imaginative expression[s] of [] contempt,’ and language used ‘in a loose,
4 figurative sense’ have all been accorded constitutional protection.” (quoting *Greenbelt Pub. Assn.*
5 *v. Bresler*, 398 U.S. 6, 14 (1970); *Letter Carriers v. Austin*, 418 U.S. 264, 284, 286 (1974)). If the
6 police officer truly believed Arellano’s package contained a bomb or poison, it is implausible that
7 he would have left the package inside the gate or allowed Arellano to retrieve it. The officer may
8 have been incredibly insensitive to Arellano or intentionally rude and condescending, but that
9 intent does not make the statement defamatory.

10 The second issue is that Arellano also does not plead facts showing the statement was
11 “published.”⁶ Although Arellano alleges the officer had had his bodycam on, there are no
12 allegations that the recordings were ever viewed (and thereby published) by anyone. Nor is there
13 any plausible reason alleged why the officer’s bodycam footage of the encounter with Arellano
14 would have been or should have been viewed by anyone.

15 Finally, I note that comments made during citizen reports to police officers – as Arellano
16 was admittedly attempting on November 9, 2024 – are generally absolutely immune under
17 *Hagberg v. California Fed. Bank*, 32 Cal. 4th 350, 364 (2004) (recognizing that “when a citizen
18 contacts law enforcement personnel to report suspected criminal activity and to instigate law
19 enforcement personnel to respond, the communication also enjoys an unqualified privilege under
20 [Cal. Civ. Code] section 47(b)” protecting statements made during an official proceedings).

21 Arellano’s defamation claim, based on the only statement identified, fails as a matter of
22 law. It is DISMISSED without leave to amend.

23 While the caption of Arellano’s Complaint identifies a host of federal and state criminal
24 and civil statutes, the focus of the Complaint, and the claim submitted to the City of Concord
25 attached to the Complaint, is defamation. *See* Dkt. No. 15 at 2 (“This case comes because AN

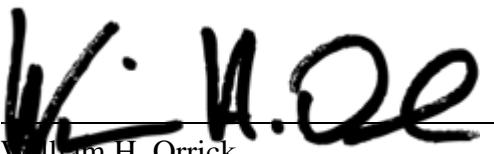
26 _____
27 ⁶ “Publication means communication to some third person who understands the defamatory
28 meaning of the statement and its application to the person to whom reference is made. Publication
need not be to the ‘public’ at large; communication to a single individual is sufficient.” *Smith v.
Maldonado*, 72 Cal. App. 4th 637, 645 (1999), *as modified* (June 23, 1999).

1 UNKNOWN NAME OR BADGE NUMBER Office of the Concord Police department defamed
2 me). There are no factual allegations alleged regarding any other conduct that could support
3 a cause of action against the City of Concord, the only defendant here.⁷

4 The Complaint is DISMISSED with prejudice and without leave to amend as Arellano will
5 not be able to state a claim for defamation as a matter of law based on the comments of the police
6 officer on November 9, 2024.

7 **IT IS SO ORDERED.**

8 Dated: July 23, 2025

9
10
11 
William H. Orrick
United States District Judge

12
13
14
15
16
17
18
19
20
United States District Court
Northern District of California

21
22
23
24
25
26
27
28

⁷ Concord argues why Arellano has not or could not state a claim based on the federal or state
statutes identified in the Caption. Mot. at 8-10. I do not reach those arguments here because the
Complaint is based solely on the defamation claim. There are no facts alleged that could support
claims under any of the federal or state statutes cited in the caption. Moreover, according to the
claim form Arellano submitted to Concord, attached to his Complaint, the basis of *this* case is the
defamation by the police officer, although Arellano also seeks damages for the murder of his son,
aiding and abetting, accessory after the fact and deprivation of citizenship. Dkt. No. 1 at ECF
pg.5. As noted above, Arellano's complaints related to how the murder of his son was
investigated and prosecuted, as well as allegations regarding his poor treatment by police officers,
prosecutors, the District Attorney, and various judges during that process were addressed and
rejected in Arellano's prior case and affirmed on appeal. They cannot be reasserted or form the
basis of another case. *In re Int'l Nutronics, Inc.*, 28 F.3d 965, 969 (9th Cir. 1994) (the doctrine of
res judicata "bars a party from bringing a claim if a court of competent jurisdiction has rendered a
final judgment on the merits of the claim in a previous action involving the same parties or their
privies").